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7

8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, ) Civ. S-05-0418 MCE KJM  
11 Plaintiff, )  
12 v. ) **EX PARTE APPLICATION TO  
13 2002 CADILLAC ESCALADE, VIN: ) MODIFY PRETRIAL (STATUS)  
14 1GYEK63N52R122808, CALIFORNIA ) SCHEDULING ORDER  
LICENSE 4UHN183, ) AND ORDER  
15 Defendant. )  
16**

17 Plaintiff United States of America submits this ex parte  
18 application to modify the June 20, 2005, Pretrial (Status)  
19 Scheduling Order. Plaintiff only requests an extension of the  
20 discovery cut-off from September 23, 2005 to October 23, 2005.  
21 Good cause for the requested modification is set forth below.

22 1. Plaintiff made the disclosures required by Fed. R. Civ.  
23 P. 26(a)(1).

24 2. Claimant Victoria Velazquez never made any Rule 26  
25 disclosures.

26 3. Plaintiff served interrogatories and a request for  
27 production of documents on claimant on June 28, 2005.

28 4. Claimant has not responded to the discovery requests.

1       5. On July 29, 2005, Plaintiff noticed claimant's  
2 deposition for September 13, 2005.

3       6. Plaintiff sent two letters to claimant's counsel  
4 reminding him that claimant's Rule 26 disclosures and discovery  
5 responses were overdue, but received no response. Accordingly,  
6 on August 23, 2005 plaintiff filed a "Motion to Exclude Evidence  
7 and Witnesses Not Previously Disclosed Pursuant to F.R.Civ.P. 26  
8 and Motion to Compel Answers to Interrogatories and Response to  
9 Request for Production of Documents." The hearing was scheduled  
10 for September 14, 2005.

11       7. Plaintiff re-noticed claimant's deposition for  
12 September 20, 2005, a date after the scheduled hearing on the  
13 discovery motion.

14       8. At the September 14, 2005, hearing on plaintiff's  
15 motion, plaintiff requested that claimants be ordered to answer  
16 the interrogatories, and produce the requested documents, no  
17 later than 5 p.m. on September 19. Plaintiff requested the  
18 September 19, 2005 deadline so there would be time to review the  
19 documents before claimant's deposition scheduled for the  
20 following day.

21       9. The Magistrate Judge denied plaintiff's request for a  
22 September 19 response date, and denied the request for a sanction  
23 for failing to make the Rule 26 disclosures, and entered an order  
24 giving claimant until September 28, 2005, to make her Rule 26  
25 disclosures and to respond to the outstanding discovery.

26       10. Based on the Magistrate Judge's order, plaintiff has  
27 re-noticed claimant's deposition for October 7, 2005.

28       11. Plaintiff did not object to the September 28 disclosure

1 date erroneously believing, as did the Magistrate Judge, that the  
2 discovery cut-off was several months away. Plaintiff realized  
3 after the hearing that the existing Pretrial (Status) Scheduling  
4 Conference Order requires all discovery to be completed by  
5 September 23, 2005. Trial is not scheduled until June 21, 2006.

6 12. Plaintiff requests that the discovery deadline be  
7 extended to October 23, 2005, to give claimant time to make her  
8 Rule 26 disclosures and to respond to the outstanding discovery,  
9 and to permit plaintiff to depose her.

10 13. Plaintiff has been diligent in conducting discovery.

11 14. Granting plaintiff an extension of time to depose the  
12 claimant will not affect any other dates in the scheduling order.

13 15. Undersigned counsel attempted to contact claimant's  
14 attorney, Victor Haltom, today, September 15, 2005, to seek his  
15 agreement to this request, but was unable to reach him.

16

17 Respectfully submitted,

18 DATED: September 15, 2005

19 MC GREGOR W. SCOTT  
United States Attorney

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By: /s/ kdoor  
KRISTIN S. DOOR  
Assistant U.S. Attorney

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## ORDER

Good cause having been shown, the deadline for completion of discovery shall be extended to October 23, 2005. All other dates in the June 20, 2005, Status (Pretrial Scheduling) remain the same.

DATED: September 20, 2005

Morrison C. England, Jr.  
MORRISON C. ENGLAND, JR  
UNITED STATES DISTRICT JUDGE